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UNCLAS SECTION 01 OF 02 NIAMEY 000477

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SUBJECT: Niger President Requests Constitutional Court to Retract Its June 12 Ruling on Proposed Referendum

Ref: a) Niamey 466, b) Niamey 448, c) Niamey 433

NIAMEY 00000477 001.4 OF 002

¶11. (U) Summary. Government of Niger (GON) Spokesperson Ben Omar appeared on the June 24 Tele-Sahel evening news broadcast on behalf of GON President Mamadou Tandja to announce Tandja's request that the Constitutional Court retract its June 12 ruling that declared unconstitutional Tandja's proposed referendum for a new constitution. Were the Court to retract its ruling of two weeks ago, that act would equate to declaring itself incompetent and, essentially would demand that the Court resign. The request was delivered the day following GON Prime Minister (PM) Seini Oumarou's return to Niamey from the Economic Community of West African States (ECOWAS) Heads of State Summit in Abuja, where he had assured other Heads of State that the GON would respect the Nigerien Constitution. End summary.

Yet Another Maneuver

¶12. (U) During the course of the June 24 Tele-Sahel (state television) evening news broadcast, the news anchor informed the public that GON Spokesperson Ben Omar had notified the station that he would deliver a message on behalf of GON President Mamadou Tandja. Once Omar appeared, he proceeded for some 20 minutes with a convoluted statement that included a couple dozen clauses from the Constitution and an equally long list of legal provisions to say essentially that, in the President's estimation, the Court had not followed the correct process to arrive at its ruling that found unconstitutional the President's proposed referendum for a new constitution. Further, the communication stated that "the President is the guarantor of the respect of the Constitution" and that the Court "has no power to rule over a presidential decree summoning the electoral college for political elections or a referendum."

Supporters for Tandja's Extension Attack the Court

¶13. (U) Vitriolic comments against Niger's Constitutional Court and its June 12 ruling continue. Tele-Sahel, now assigned by some the monicker "Tele-Tazartche," continues to air editorials from prominently known Nigeriens lauding the President's work and questioning the Court's competency. (Note: "Tazartche" is Hausa language for "let it continue." End note.) Private television TV Dounia also has interviewed some leaders with opinions that the President is above the Court and therefore rulings should not be compelling on the President. Government-prompted rallies and statements on public media have continued in various regions,

criticizing the Court and calling for its resignation or dissolution.

Evaluation of Legal Precedent for Court Retraction

¶4. (U) In a Tele-Sahel interview, Djibrillou Mai Saley of the Paris Bar Association (and a Tandja extended family member) cited as precedent a 2003 review by the Court of three prior rulings, and stated that the President may request the Court to review its June 12 finding against the proposed constitutional referendum. (Note: In December 2003, following a claim lodged by the President, the Constitutional Court rescinded three rulings: one issued September 4, 2002 related to provisions of the Inter-African Code of Market Insurance (CIMA) (2002-14/CC); a second issued September 6, 2002 related to contracting procedures in the Public Market Code (2002-15/CC); and a third issued September 6, 2002 on the state of emergency declared by the President on July 31 and August 5, 2002, regarding mutinies in the army (2002-16/CC). The Court declared those three decisions "legally non-existent," ruling them "null and void" for lack of a required quorum of at least five judges. End note.)

¶5. (U) Article 115 of the Nigerien Constitution provides that "Constitutional Court rulings shall not be subject to appeal" and are legally binding on public authorities and all administrative, civil, military, and jurisdictional authorities. However, it is possible to request the Court to interpret its ruling if it appears unclear to concerned parties.

¶6. (U) Some analysts question the admissibility of the President's request on the emergency ruling and argue that the constitutional provisions put forward would suffice to justify the Court's decision on the proposed referendum. They criticized the President's latest

NIAMEY 00000477 002.4 OF 002

maneuver as indicative of some interpretations that the President, as "supreme judge," is above the Court and, consequently, could take virtually any action... even violating the letter of the Constitution. Viewing the role of the President as an omnipotent entity may result in weakening the Constitutional Court, as it may no longer be able to play its regulatory/arbitration function if it reinforces the head of the executive beyond the letter and spirit of the constitution.

¶7. (U) In 2002, as a result of disagreements between the Court and the Executive due to the latter's attempt to influence or ignore the former's decisions, the president and vice president of the Court resigned (September 11, 2002). They stated that they could no longer fulfill their duties in a context where the Executive wanted them to violate the constitution. The government appointed a new Court president and vice president and pressed the Court to issue the December 2003 ruling that various universities and research institutions in the region continue to criticize as a laughable "judicial scandal." (Note: The president of the Court that issued the December 2003 ruling is currently on the committee that the President assigned the task to draft a new constitution. End note.)

Reactions to the Latest Maneuver

¶8. (U) President Tandja's request for the Court to overturn its own ruling occurred despite civil society and political parties' calls for him to abide by the Court's decision. As a consequence, the Social Democratic Convention (CDS), the second largest party of Niger's ruling coalition, decided to quit the coalition and withdrew its eight ministers from the President's Cabinet. The CDS has formed an opposition coalition with other political parties and civil society groups.

¶9. (U) Soli Abdourahamane, a former minister of justice and former state prosecutor, described the President's arguments as "ridiculous." He said, "in Nigerien law, there is no such thing as a legally non-existent court decision." He also mentioned that the President could not base his claims on the 2003 Court ruling,

because one of the Court's reasons for repealing its decision was the lack of a quorum of at least five judges provided by the court's by-laws. It remains to be seen if and how the Court will respond to the President's request.

Duplicity in the Announced Signing of Election Decree

¶110. (U) Some observers see the announcement of the signing of the decree to conduct legislative elections anticipated for August 20 as an attempt by the President to divert civil society, political parties and international attention from his referendum project. The announcement of the signed decree occurred two days before the ECOWAS summit in Abuja probably in order to delay possible sanctions against Niger. Moreover, only subsequent to PM Oumarou's return from Abuja did GON Spokesperson Omar announce the President's request to the Court for a retraction of its ruling on the proposed referendum for a new constitution.

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